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ABSTRACT

At present, 24 states and the District of Columbia have school codes that appear to provide at least the basic essentials of legal identity for the principalship. Although only eight states have school codes that specifically define the principal's role and identity and that resulted from separate legislation, the other jurisdictions have codes with extensive references to the authority and responsibility of the secondary school principal. Five states have school codes that mention the principal very often with regard to specific duties and responsibilities, but fall short of clearly providing him with a separate legal identity. Twelve states have codes wherein the principal is occasionally mentioned with regard to specific duties and responsibilities. Nine states have codes that cover the principal under the general term "teacher," with little or, virtually, no reference to the principalship as a separate entity. Legislation on the status of the principal is particularly important in the areas of collective bargaining representation and job protection. (Author/IRT)

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# A Legal Memorandum

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Concerning

## STATUTORY PROTECTION FOR PRINCIPALS
## Part I - Position and Status

ED131531

### Status Legislation

During the 1960s the role of the secondary school principal became increasingly ambiguous and untenable. The principal as a frontline manager in the day-to-day operation of the rapidly changing secondary school faced not only a greater number of lawsuits but, in many instances, a total lack of representation in professional negotiations. Because of these and other closely related reasons, the NASSP considers the establishment of a legal status, or identity, for the school principal to be a matter of highest priority.

In view of this objective, NASSP in 1970 conducted a survey to determine the legal status of the principal in each of the 50 states and the District of Columbia. Further, NASSP drafted a prototype bill for use by principals' associations in states with codes lacking definition of the principal's status.

With the help of the survey data, the 50 states and the District of Columbia were categorized into four groups on the basis of similarities in their education statutes relating to school principals. During the summer of 1973, the survey was updated in order to see what progress had been made. For comparative purposes, the categories used in the earlier survey were retained.

This Memorandum updates the data again and adds materials describing other aspects of legal status that are beginning to emerge as being equally important in the status and definition of the principal's role. No single pattern or general trend encompassing all states emerged from the 1970 study; and current information does not change this conclusion. There has been encouraging progress, however, toward development of specific state legislation providing legal status and other kinds of legal protection for principals.

Our original analysis broke state legislation down into four categories ranging from states which made no distinction in their laws between principals and teachers to those which accorded at least the basic essentials of legal identity for the principalship. This was further defined to mean state codes which had extensive references to the authority and responsibility of the secondary school principal.

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Category A, composed of 24 states and the District of Columbia, includes those whose school codes appear to provide at least the basic essentials of legal identity for the principalship. Although only eight apparently have school codes that specifically define the principal's role and identity and that resulted from separate legislation, the other jurisdictions have codes with extensive references to the authority and responsibility of the secondary school principal.

Category B includes five states having school codes that mention the principal very often with regard to specific duties and responsibilities, but fall short of clearly providing him with a separate legal identity. These states fail to provide the type of legal identification that would provide essential authority and support for the principal in the event of a legal challenge to his rights and responsibilities.

Category C, in which 12 states are found, includes those state codes wherein the principal is occasionally mentioned with regard to specific duties and responsibilities. These codes, like so many others, are not consistent. Although the principal is not legally defined and remains to a large extent classified with teachers as a teacher, there are occasionally specific references regarding some duties and powers of the principal.

Category D, composed of nine states, includes those where it is clear that the principal has not attained legal status or identification. He is covered throughout the state code under the general term "teacher," with very little or virtually no reference to the principalship as a separate entity.

CATEGORY A (25)

| | | | |
|---|---|---|---|
| California | Iowa | New Jersey | New Mexico |
| Colorado | Kansas* | New York* | Virginia |
| District of Columbia | Massachusetts | North Carolina | Washington** |
| Hawaii | Michigan | North Dakota | West Virginia |
| Indiana | Minnesota | Rhode Island* | Wisconsin |
| Illinois | Mississippi | Tennessee | |
| | New Hampshire* | Texas | |

*Administrative rules with the force of law
**Both administrative and statutory provisions

CATEGORY B (5)

| | | | | |
|---|---|---|---|---|
| Florida | Maryland | Nevada | Ohio | Pennsylvania |

CATEGORY C (12)

| | | | |
|---|---|---|---|
| Arizona | Missouri | Oklahoma | South Dakota |
| Georgia | Montana | Oregon | Vermont |
| Louisiana | Nebraska | South Carolina | Wyoming |

CATEGORY D (9)

| | | |
|---|---|---|
| Alabama | Connecticut | Kentucky |
| Alaska | Delaware | Maine |
| Arkansas | Idaho | Utah |

Nearly half of the states (24, plus the District of Columbia) are now in category A--according full legal recognition to principals. Ten states have moved into this category in the three years since we published the earlier update, many using the NASSP prototype as their model. Six jurisdictions have achieved full status through administrative rules having the force of law. As a matter of fact, this approach seems to have become as popular as the legislative route with four of the 10 states achieving category A status doing so in that manner.

Ten States Added to Category A Since 1973

| | | | |
|---|---|---|---|
| Indiana | Minnesota | Tennessee | Wisconsin |
| Iowa | New York | Washington | |
| Kansas | Rhode Island | West Virginia | |

Rationale for Status Legislation

In some states principals have encountered difficulty in gaining support of legislative or administrative officials who claimed to see little purpose or merit in establishing clearer legal identification and status for principals. Recent developments, however, have made the need for legal status clearer than ever before.

If the principal is classified with and identified as "teacher" in school codes, there are virtually no distinctions in working conditions, responsibilities, rights, duties, and salaries, to name a few, between principals and teachers. This lack of distinction, or ambiguity, is potentially injurious in many circumstances.

In several states, for example, principals and teachers are bound into the same bargaining or negotiating unit. This joining together of principals and teacher has often resulted in virtual non-representation for principals. If principals had statutory identity with clearly defined rights and responsibilities, such non-representation in bargaining could be remedied effectively.

*PROTOTYPE BILL*

*The board of education shall employ through written contract public school principals who shall hold valid supervisory or administrative certificates, who shall supervise the operation and management of the school or schools and property as the board shall determine necessary.*

*The principal shall assume administrative responsibility and instructional leadership, under the supervision of the superintendent, and in accordance with the reasonable rules and regulations of the board, for the planning, management, operation, and evaluation of the educational program of the attendance area to which he is assigned;*

*The principal shall submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to the attendance area;*

*The principal shall perform such other duties as may be assigned by the superintendent pursuant to the reasonable rules and regulations of the board of education.*

A factor of considerable importance is the "vague, isolated" feeling many administrators experience as they are torn between two adversary groups in the daily performance of their duties. Where does their allegiance lie--with management and the central office administration, or with the teaching staff? This problem is particularly acute in our large city schools, where principals so often have the trappings but not the substance of administrative authority. Here, also, strong legislation will aid in establishing the identity of the principal and provide him with a legal basis for clearly marking out the bounds of his rights and responsibilities and for asserting his authority.

Principals in several states have sought additional protection and support for their positions through state legislation or administrative regulation addressed to specific concerns.

Job Protection

The most obvious form of the kind of legislative protection is position tenure, a status attained after a certain number of years, and from which one can only be removed for a specific cause (usually spelled out in the statute). This status also required the extension of certain procedural protections, primarily notice and hearing prior to non-renewal. Currently only 18 jurisdictions grant tenure to principals as administrators as opposed to being teachers.

The recent Massachusetts statute is a good example:

> *No principal, supervisor, assistant principal or professional employee performing the duties of a principal, supervisor or assistant principal, by whatever title his position may be known, who has served in that position for over three years shall without his consent be demoted except for inefficiency, incapacity, unbecoming conduct, insubordination or other good cause; nor unless, at least 30 days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his demotion is proposed; nor unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee, and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the charge or charges shall have been substantiated; nor unless the superintendent shall have given the committee his recommendations thereon.*
>
> *For the purpose of this section, a person shall be deemed to have been demoted if his salary has been reduced contrary to the provisions of Sec. 43 of this chapter or if he has been transferred without his consent to a position wherein he no longer serves at discretion.*
>
> *Any person who has been demoted by vote of a school committee under the provisions of this section may within 30 days after the vote of dismissal or demotion appeal therefrom to the superior court in the county in which he was employed.*
>
> Massachusetts General Laws Relating to Education, Ch. 71, Sec. 42A. Demotion of Principals and Supervisors

Another type of legislative job protection authorized multi-year contracts, usually for terms of 2 or 3 years. Such provisions are rarely, if ever, mandatory, and still permit non-renewal without cause or chance for a hearing, but do provide greater assurance of continuity than the typical year-to-year contract.

A third variation now being tried in some jurisdications where administrative tenure has not been attainable is statutory provision of procedural due process to any educator whose contract is not renewed. Unlike tenure, this kind of statute does not require a certain number of years service, and does not spell out the kinds of "cause" for which the educator can be released at the end of the contract period. It does, however, require notice as well as a statement of the reasons for non-renewal, and an informal opportunity to discuss the decision with the board. Since some reasons for non-renewal imply interference with constitutional rights, these requirements may also give rise to a right to demand a full-scale hearing as well. Some statutes also include an evaluation requirement as a prerequisite to non-renewal. New Jersey's law is a good example.

> *Every board of education in this State shall cause each non-tenure teaching staff member employed by it to be observed and evaluated in the performance of his duties at least 3 times during each school year but not less than once during each semester, provided that the number of required observations and evaluations may be reduced proportionately when an individual teaching staff member's term of service is less than one academic year. Each evaluation shall be followed by a conference between that teaching staff member and his or her superior or superiors. The purpose of this procedure is to recommend as to reemployment, identify any deficiencies, extend assistance for their correction and improve professional competence.*
>
> *Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such nonemployment which shall be given to the teaching staff member in writing within 15 days after the receipt of such request.*
>
> Education Code of New Jersey
> Chapter 27, Article 1, Sec. 18-A: 27-31
> New Jersey Statutes, Annotated.

In addition to dismissal or non-renewal, principals also run the risk of demotion or other reclassification resulting in loss of rank or salary. A recent Illinois law affords procedural protection against this risk, though it does not limit the actions to specific statutory causes.

> *No principal appointed by the board of education shall after serving the probationary period of three years specified in Sec. 34-4 be reclassified to a lower position or administrative grade on his or her principal's certificate unless reasonable advance notice is given in writing of the proposed reclassification. The term "reclassify" means a demotion or reduction in rank from one position to another for which a lower salary is paid.*

*Within 10 days of receipt of such notice, the principal may request and receive a private hearing with the board to discuss the reasons for the proposed reclassification. If the principal is not satisfied with the results of the private hearing he or she may within five days thereafter, request and receive a public hearing on the proposed reclassification. The principal may be represented by counsel at any private hearing or public hearing conducted under this Section. If the board decides to proceed with the proposed reclassification, it shall give the principal written notice of this decision within 15 days of the private hearing or within 15 days of the public hearing held under this Section, whichever is later. The decision of the board thereupon becomes final.*

*Nothing in this Section prohibits a board from ordering lateral transfers of principals to positions of similar rank and equal salary.*

Illinois Annotated Statutes
Chapter 122, Sec. 34-85, added by
P.A. 79-1109, June 27, 1975

Other Dangers

The responsibilities of the principal often involve risks not only of loss of position or status, but of direct financial liability to third parties as well. The primary source of protection relied upon against this risk has been personal insurance. Here, too, however, state legislation has begun to play a supportive role in protecting principals and other educators. A review of such statutes will be the subject of the next Legal Memorandum.

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